

EXHIBIT K

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

CATHERINE L. DAVIS and)
TOMMY MOORE,)
individually, and on)
behalf of others)
similarly situated,)

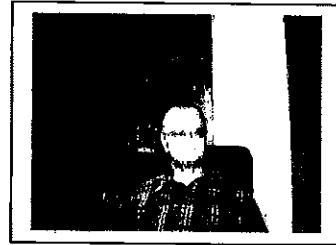
Plaintiffs,)

-vs-)

No. 5L07-cv-01401-W)

DELL, INC., d/b/a DELL)
COMPUTER, INC., DELL)
USA L.P., and DELL)
MARKETING L.P.,)

Defendants.)



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REPORTING & VIDEO, INC.



DEPOSITION OF TOMMY MOORE

TAKEN ON BEHALF OF THE DEFENDANTS

IN OKLAHOMA CITY, OKLAHOMA

ON OCTOBER 15, 2008

COPY

REPORTED BY: KASEY D. EGELSTON, CSR

1 check doesn't represent the hours that you
2 worked.

3 Q Now, how did you -- how was your time
4 kept while you worked at Dell?

5 A Logging in, logging out.

6 Q And do you remember the name of the
7 system?

8 A Kronos.

9 Q Was it like a timeclock, so that you
10 had to swipe in when you got there, or punch in
11 or anything, or how did it actually physically
12 work?

13 A When you log in on your telephone,
14 Kronos was attached to the telephone system and
15 it's recorded.

16 Q And then how would you log out?

17 A Same way.

18 Q Connected to your telephone system?

19 A Yes.

20 Q If a mistake were made -- if a mistake
21 got made in the entry of the time, how did that
22 get corrected?

23 A I don't know that answer.

24 Q Okay. Do you know how -- on what basis
25 were you paid when you worked at Dell?

1 A You mean hourly versus salary?

2 Q Yes.

3 A I thought I was hourly.

4 Q What made you think that?

5 A They record our time.

6 Q Did you receive any overtime pay?

7 A Yes.

8 Q Do you know how it was calculated?

9 A No.

10 Q Did you go through an initial training
11 period?

12 A Yes.

13 Q And do you remember how long that was?

14 A 30 days.

15 Q And do you remember who your trainer
16 was, by any chance?

17 A I don't recall his name.

18 Q It was a man?

19 A Yes.

20 Q Did he do all of the training or did
21 other people come in and do parts of it?

22 A Other people did come in and
23 contribute.

24 Q Were there any discussions of
25 timekeeping in that training?

1 A I don't recall visually what Kronos --
2 I'm not familiar with this format, no.

3 Q Okay. And you, for the period you
4 worked there, never entered any time, yourself,
5 into Kronos?

6 A No.

7 Q Did you ever have any instructions as
8 to what times you were supposed to be paid for?
9 Did anybody tell you what time you were supposed
10 to be paid for?

11 A I don't recall any instructions.

12 Q Okay. Did you ever -- were you
13 familiar with a process known as either a
14 trouble ticket or a WOW ticket?

15 A No.

16 Q Did you know anything about the way
17 Kronos handled time for lunch?

18 A No.

19 Q You don't know whether it deducted an
20 hour from your schedule or not?

21 A No.

22 Q Are you contending that there were ever
23 any lunches that you worked through, that you
24 weren't paid for?

25 A Yes.

1 A 30 minutes.

2 Q Did you ever have a 60-minute lunch
3 period?

4 A Not that I can recall.

5 Q The lawsuit that you filed was filed as
6 a collective action under the Fair Labor
7 Standards Act, and also a Rule 23 class action
8 under the Oklahoma statute.

9 Do you have any understanding of what
10 your responsibility is as a Rule 23 class
11 representative?

12 A No.

13 Q Have you ever heard the term "Rule 23"?

14 A No.

15 Q Do you have any understanding of any
16 responsibilities you might have over and above
17 just being a regular plaintiff in this lawsuit?

18 A No.

19 Q You've provided an affidavit in this
20 lawsuit that, if the case were transferred to
21 Austin, that you would be unable to participate
22 at all.

23 Do you remember doing that?

24 A Yes.

25 Q Was that truthful and accurate?

1 A Yes.

2 Q Was that for financial reasons?

3 A Yes. And work reasons.

4 Q Okay. If you had extra

5 responsibilities as a class representative,

6 knowing that the suit would be in Austin now,

7 would you be able to undertake any additional

8 responsibilities?

9 A No.

10 Q Did you ever -- when you were working
11 as a sales representative, did you have e-mail?

12 A Yes.

13 Q Did you have voicemail?

14 A Yes.

15 Q And the e-mail, did you have access to
16 it at any time except for when you were signed
17 on and logged on?

18 A You would have to be logged on.

19 Q Ready to take a call?

20 A Yes.

21 Q Same true of voicemail?

22 A Yes.

23 Q And was that used for communicating
24 with customers?

25 A Yes.

1 those numbers?

2 A I'm not comprehending what that means.

3 Q Okay. Did you see that, in every case,
4 you were paid for 40 hours of regular base pay?

5 A On which page are we looking at?

6 Q At the -- let's look on page 250, and
7 see where it says "Salary NE Regular Hours, 80"?

8 A Yes.

9 Q And then see the current amount of
10 salary is \$876.92?

11 A Yes.

12 Q Do you see where the next -- 256, the
13 salary amount is the same?

14 A Yes.

15 Q And then the same is true on the
16 Dell-Davis 254?

17 A Yes.

18 Q And then the current amount is true --
19 is the same on Dell-Davis 252?

20 A Yes.

21 Q So was it your understanding that
22 you've always received the same base pay each
23 week?

24 A Yes.

25 Q Regardless of the number of hours that

1 you've worked?

2 A Yes.

3 Q Do you think at some point you
4 understood that you were a salaried employee,
5 not an hourly employee?

6 A Yes. Well, I felt that, anything over
7 40 hours, that you would be paid overtime for
8 over 40.

9 Q Okay.

10 A They referred to it as their
11 designation for how they -- salary/hourly. I
12 felt it was both the same. If I worked over 40
13 hours, you get overtime for that.

14 Q So just so we're clear on -- you
15 understood that you were salaried, but that if
16 you worked overtime, you would be paid? Over
17 40, you would be paid overtime?

18 A Yes.

19 Q And who did you get that understanding
20 from?

21 A In preparation and training.

22 Q That would have been covered in the
23 initial training session?

24 A Yes.

25 Q Let me show you what's been marked as

1 mention that there were two separate
2 calculations for overtime pay?

3 A No.

4 Q And that, again, is a -- I mean, you're
5 sure it's a clear recollection?

6 A Pretty clear recollection, yes.

7 Q Okay. It says: "To understand time
8 and a half calculation, remember you are already
9 paid for your time in your biweekly salary
10 paycheck. The additional payment for the half
11 is reflected below and paid in addition to your
12 regular salary paycheck."

13 Did you ever hear anyone ever say
14 anything similar to that statement, that your
15 regular -- your time is paid in your biweekly
16 salary paycheck and you get half time for the
17 overtime?

18 A I don't recall.

19 Q You don't recall ever hearing anything
20 like that?

21 A No.

22 Q Down -- if you look at the calculation
23 for base pay overtime, the first little phrase
24 is SR1B; is that right?

25 A Yes.

1 Q That was your job classification?

2 A Yes.

3 Q Did you ever get promoted beyond that?

4 A No.

5 Q And annual TTC -- total targeted
6 compensation -- that doesn't ring any bells?

7 A I've never heard TTC.

8 Q \$28,180.

9 Do you remember what you anticipated
10 that you might make when you were hired?

11 A \$28,000.

12 Q So this sounds like this was the
13 approximate amount that was designed for you?

14 A Yes.

15 Q And biweekly base salary was \$860.77.

16 You understand how that would be
17 derived from the annual salary?

18 A Yes.

19 Q There were 26 paychecks; is that right?

20 A Yes.

21 Q And then you understood how you would
22 get a weekly base salary from the biweekly
23 salary?

24 A Yes.

25 Q And then if they give you an example,

1 pay schedule of how you're paid, the hours
2 worked, and how much they pay.

3 Q (By Mr. Fox) And PowerPoint
4 presentation -- does it look to be a PowerPoint
5 presentation or a copy of a PowerPoint
6 presentation?

7 A That's what it appears to be.

8 Q Was that how information was frequently
9 communicated to you when you were at Dell?

10 A Yes.

11 Q Do you recall ever seeing one that was
12 either identical or similar to this one?

13 A I don't recall.

14 Q The first page says: "Weekly salary
15 paid biweekly."

16 You understood that was how you were
17 paid?

18 A Yes.

19 Q And you knew you were paid that weekly
20 salary, regardless of number of hours worked?

21 A Yes.

22 Q And then did you understand that the
23 overtime premium for hours worked was paid at .5
24 of the regular rate of pay for the week?

25 MR. FARHA: Object to the form.

1 \$450, plus \$45 overtime premium.

2 Without understanding the actual
3 numbers involved, is that how you understood
4 that you were being paid?

5 A These are examples. And no, I don't
6 have an understanding of that.

7 Q Okay. You had an understanding that
8 your weekly salary stayed the same regardless of
9 the number of hours that you worked?

10 A Yes.

11 Q And you had an understanding that you
12 received some overtime premium?

13 A Some overtime.

14 Q What you did not have a clear
15 understanding of is how the exact overtime
16 premium was calculated?

17 A That's correct.

18 MR. FOX: Let's take a break.

19 (Short break)

20 Q (By Mr. Fox) All right. Let me show
21 you what's been marked as deposition Exhibit 6.

22 And this is something that was after
23 you were there, so I don't anticipate you've
24 ever actually seen this; is that correct?

25 (Defendants' Exhibit Number 6 was